

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*

02/14/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000764

FILED: \_\_\_\_\_

JEFFREY D BULGRIN  
v.  
STATE OF ARIZONA

GARRETT L SMITH  
  
ROGER KEVIN HAYS  
  
MESA CITY COURT  
REMAND DESK CR-CCC

RULING  
AFFIRM/REMAND

MESA CITY COURT  
CIT. NO. #771726

CHARGE:

1. DUI IN ACTUAL CONTROL OF VEHICLE
2. HAVING A B.A.C. OF .10 OR MORE
3. DRIVER UNDER AGE 21 WITH ANY AMOUNT OF ALCOHOL IN BODY

DOB: 08-16-1982

DOC: 06-08-01

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on January 14, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Mesa City Court and the memoranda submitted by counsel.

Appellee, Jeffrey Bulgrin, was charged with Driving While Under the Influence of Intoxicating Liquor on June 8, 2001. Appellee pled not guilty and filed a Motion to Suppress/ Dismiss. The trial court held an evidentiary hearing on Appellee's motion on

October 1, 2001, and took the matter under advisement at the conclusion of the hearing. The trial court made detailed findings of fact in an order dated October 4, 2001, wherein the trial court granted the Motion to Suppress all evidence obtained as a result of the stop of Appellee's automobile. The trial court denied the motion to dismiss the charges. Appellant, the State of Arizona, filed a timely Notice of Appeal in this case. Appellant claims that the trial court erred in suppressing all evidence gathered after a stop of Appellee's vehicle. Appellant claims that the Mesa police officers did have a "reasonable suspicion" which would justify the stop of Appellee's vehicle.

An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.<sup>1</sup> These facts and inferences when considered as a whole ("the totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."<sup>2</sup> A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct an "investigative detention":

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.<sup>3</sup> In *Whren*,<sup>4</sup> the United States Supreme Court upheld the District Court's denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.<sup>5</sup>

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.<sup>6</sup> An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.<sup>7</sup> This Court must review those factual findings for an

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<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1998); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

<sup>2</sup> *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981).

<sup>3</sup> *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner*, *supra*.

<sup>7</sup> *Id.*

abuse of discretion.<sup>8</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>9</sup> This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.<sup>10</sup> In this case, the trial judge entered a detailed order granting Appellee's Motion to Suppress. The trial judge stated in his opinion:

The facts, basically uncontested, are that Mesa officers were responding to "shots fired" calls in a desert area of the city. There were numerous cars in the area (more than three—but how many is unclear). The Defendant (Appellee) was the lead car of three heading out of the desert area when the officers arrived. Other cars and people remained in the desert area. The Defendant's (Appellee's) driving was normal and within the law. The sole reason he was stopped by the officers was to see if he was involved in any way with the reported "shots fired." . . .

While "shots fired" may be a basis to stop someone who is identified as involved with the shots being fired, it is not a reasonable basis to stop everyone in the area. There was no indication that the Defendant's (Appellee's) car contained anyone involved. There was no description of the vehicle within police knowledge. If there had been only one car in the area, that would have allowed the police to draw a reasonable conclusion that that car was involved. There were, however, numerous cars in the area . . . .

The police must be able to focus on an individual car in some way for the stop to be valid.

The stop of the Defendant's (Appellee's) vehicle is, thus, in violation of the Fourth Amendment. The evidence seized from that stop must be suppressed (citation omitted).<sup>11</sup>

The trial court's factual findings support its conclusion that the Mesa police officers lacked a reasonable suspicion that Appellee's automobile was involved in the "shots fired." Therefore, the trial court's legal conclusion that the stop of Appellee's vehicle was unreasonable is also warranted by the record.

IT IS THEREFORE ORDERED sustaining the order of the Mesa City Court granting Appellee's Motion to Suppress.

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<sup>8</sup> State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>9</sup> State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>10</sup> 10 State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>11</sup> Order of October 4, 2001, by the Honorable Walter E. Switzer, III, at pages 1-2.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all future proceedings in this case. 11 Order of October 4, 2001, by the Honorable Walter E. Switzer, III, at pages 1-2.